



Endangered Species Act Update

EPA Region 10 and State Lead Agencies
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EPA Consultation on OPs

- EPA initiated consultation in January 2017 by issuing the first-ever nationwide Biological Evaluations (BEs) for chlorpyrifos, diazinon, and malathion
- Pursuant to a consent decree, NMFS was required to issue a final BiOp for these three pesticides by December 31, 2017
- NMFS sought a time extension by the court in November, it was not granted by the December, 2017 final BiOP due date

EPA Consultation on OPs (cont.)

- » Time extension was sought by NMFS because:
 - » BEs were delayed from original targets
 - » Scientific issues are more complex than anticipated
 - » Concerns were raised by EPA, FWS, and stakeholders that require lengthy and intensive inter-agency collaborative work
 - » Additional time would have allowed for public comment on a draft BiOp as planned
- » NMFS issued a final BiOp on December 29th
 - » A draft BiOp was not released prior to the final
- » EPA's Public comment period requested comment on:
 - » The scientific approaches and data sources used to support the BiOp
 - » The RPAs and RPMs
 - » National- and state-level use and usage data and information

EPA Consultation on OPs (cont.)

- The U.S. Fish and Wildlife (FWS) also agreed to issue a BiOp for these three pesticides by December 31, 2017, but the terms of the settlement agreement gave them flexibility to not meet the date
 - EPA is compiling additional data for the three chemicals
 - The Agencies are collaborating on appropriate use of the information in the consultation process

EPA NMFS BiOp summary

- The BiOP found “jeopardy” to 38 species and “adverse modifications” to 37 critical habitat units
- For species with “jeopardy” findings, Reasonable and Prudent Alternatives (RPAs) are identified to avoid jeopardy
- Reasonable and Prudent Measures (RPMs) are intended to minimize “take”

EPA NMFS BiOp summary (Cont.)

- ✧ RPMs are non-discretionary:
 - ✧ Develop relevant EPA Endangered Species Protection Plan Bulletins to conserve listed species
 - ✧ Develop user education program, and incident tracking and reporting system
- ✧ RPAs in the BiOp intended to reduce exposure:
 - ✧ Limit the frequency of application to once per year
 - ✧ Limit area of application for mosquito control;
 - ✧ Limit area of application for wide area use;
 - ✧ Employ an effectiveness monitoring plan to ensure that RPA(s) selected is feasible, effective as implemented;
 - ✧ Options in a new point system that are based on a European mitigation system;

EPA Next Steps

- * EPA is currently reviewing the BiOp from National Marine Fisheries
- * A 60-day public comment period on the BiOp opened on March 23rd and closed on July 23rd
 - * <https://www.regulations.gov/document?D=EPA-HQ-OPP-2018-0141-0001>
- * Although FWS had a similar date for completing BiOps, the terms of the agreement have given them flexibility to not meet the compliance date
- * FWS requested use and usage data, which EPA has delivered

EPA Next Steps (Cont.)

- The EPA is collaborating with the Services to refine interim scientific approaches and create a sustainable process for completing consultations that meet requirements of both statutes
- EPA, FWS, NMFS, and USDA are working together to determine the most appropriate method for incorporating available usage data
- We aim to streamline the process to a point where it is protective of species, timely for FIFRA registration review decisions, feasible within the agencies' resource constraints, and transparent to the public



Public Comments

※ Numbers

- ※ Received a large number of comments, but most were signature campaign
- ※ Approximately 125 separate comments
- ※ Commenters include: Registrants, states, NGOs, mosquito control districts, government entities (including USDA), and general public

※ Process:

- ※ Transmitted comments to NMFS
- ※ EPA is currently cataloging comments and will be evaluating them
- ※ Type of comment varied depending on perspective of commenter

Why Focus on Usage Data?

- Usage data includes the amount, frequency, method, and spatial extent of pesticide applications
- Allows for an evaluation of likelihood of exposure
 - Hypothetical exposure vs exposure that is likely to occur
- Importance of usage data increases as spatial scale increases
 - Individual vs population
 - Single Field vs landscape

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Other Areas for Potential Refinements

- * Exposure and Spatial Refinements
 - * How can we better characterize and interpret likelihood and extent of exposure
- * Effects
 - * Consideration of fuller range of potential toxicological outcomes and likelihood of effects
- * Weight of Evidence
 - * How to incorporate variability, likelihood, and certainty/uncertainty in exposure and toxicological outcomes in addition to species characteristics into effects determinations

EPA ESA Interagency Working Group

- * On January 31, 2018, a Memorandum of Agreement was signed by EPA, DOI (includes FWS), DOC (includes NMFS), establishing an Interagency Working Group
- * The Working Group is charged with reviewing statutory requirements, regulations, and case law and making recommendations to improve scientific and policy approaches
- * The Working Group will provide recommendations to EPA, FWS and NMFS leadership on improving the ESA consultation process for pesticide registration and registration review